

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RAYMOND PADILLA,

Plaintiff,

vs.

E.K. MCDANIEL, ET AL.,

Defendants.

CV-N-05-0215-LRH (VPC)

**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

April 27, 2006

This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendants' motion for summary judgment (#30). Plaintiff opposed (#37), defendant replied (#35), and plaintiff, per this court's order (#40), filed a supplement to his opposition (#55). Also before the court is plaintiff's motion for injunctive relief (#31/32). Defendants opposed (#38). Also before the court is plaintiff's motion for default judgment (#49). Defendants opposed (#52).

The court has thoroughly reviewed the record and the motions and recommends that defendants' motion for summary judgment be granted (#30). The court further recommends that plaintiff's motion for injunctive relief (#31/32) be denied and that plaintiff's motion for default judgment (#49) be denied.

**I. HISTORY & PROCEDURAL BACKGROUND**

Plaintiff Raymond Padilla ("plaintiff") is a prisoner at Ely State Prison ("ESP") in the custody of the Nevada Department of Corrections ("NDOC") (#17). Plaintiff brings his

1 complaint pursuant to 42 U.S.C. § 1983, alleging prison officials violated his Eighth Amendment  
2 right against cruel and unusual punishment and his Fourteenth Amendment right to due process  
3 by failing to provide him with adequate medical treatment.<sup>1</sup> *Id.* Plaintiff names as defendants  
4 Kenny Guinn, governor of Nevada; Jackie Crawford, NDOC director; Ted D'Amico, NDOC  
5 medical director; E.K. McDaniel, ESP warden; and Dr. Steven MacArthur, ESP medical director.<sup>2</sup>  
6  
7 *Id.*

8 In count I, plaintiff alleges prison medical staff failed to provide adequate treatment for  
9 his ichthyosis, a skin condition which causes severe dry, scaly, cracking, skin. *Id.* Plaintiff claims  
10 that he suffers extreme discomfort, itching, bleeding and scarring because the prescription he  
11 received from a dermatologist was either not filled or was discontinued. *Id.* In count II, plaintiff  
12 contends that defendants failed to comply with NDOC regulations regarding inmates' medical  
13 treatment. *Id.* Plaintiff alleges that defendants violated his Fourteenth Amendment due process  
14 rights because they discontinued treatment that alleviated plaintiff's symptoms without  
15 justification and without giving plaintiff an opportunity to challenge the decision. *Id.*

16  
17 Defendants attached a sworn summary of plaintiff's medical records and kites relating to  
18 the ichthyosis, completed by the NDOC health information director (#30, Ex. A). The report  
19 showed seventeen notations of creams, lotions, oils, and bath oils, several of which appear to be  
20 prescriptions, which medical staff dispensed to plaintiff between 1992 and 2003 (no entries  
21  
22

---

23 <sup>1</sup>Plaintiff originally filed suit in state court (#1, Ex. A; #12). Defendants removed to federal court  
24 pursuant to 28 U.S.C. § 1441(a)-(c) because this civil rights claim is an action arising under U.S. law over  
25 which the District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 (#1). The court issued an  
26 order dismissing count II, which alleged that plaintiff's Fourteenth Amendment due process rights were  
27 violated, with leave to amend (#11). The court found that plaintiff failed to allege facts establishing that any  
28 process prescribed by Nevada law with respect to medical care for prisoners both (1) creates a liberty interest  
subject to due process protections and (2) was not complied with in plaintiff's case. *Id.* Plaintiff filed his  
amended complaint on May 25, 2005 (#17).

<sup>2</sup>Most of defendants' pleadings, including the summary judgment motion, incorrectly name NDOC  
as a defendant and fail to include Governor Kenny Guinn (*See* #30).

1 appear from 1997-2000). *Id.* A dermatologist saw plaintiff in 2003 and prescribed two products  
2 to be used three times per week for four months. *Id.* The report reflects that plaintiff submitted  
3 141 medical kites related to his skin condition from 1992 through September 2004. *Id.* Most of  
4 the notations do not indicate whether or what response plaintiff received. *Id.* Generally, the kites  
5 request more cream or lotion or prescription refills because plaintiff ran out, or different products  
6 because plaintiff stated what he was using was not working. *Id.* Many kites request doctor  
7 appointments. *Id.* The response to one kite seeking an appointment states that plaintiff could not  
8 have the appointment according to custody (*Id.*, medical kite notation dated 7/27/02). The  
9 response to a kite requesting vitamin E cream because Eucerin was not working explained: “Do  
10 the best you can. We cannot get Vitamin E cream here. This medicine is the same as the  
11 dermatologist ordered” (*Id.*, kite notation dated 3/11/93). A response to plaintiff’s kite seeking  
12 his medical records states: “Ichthyosis is not serious—only very dry skin. I am not the money  
13 man, but the canteen does sell lotion, oil, etc. when you get money” (*Id.*, kite notation dated  
14 4/14/94; *see also* kite notation dated 4/26/94 again directing plaintiff to purchase oil and lotion  
15 in the canteen).

16  
17  
18  
19 In 1996, medical staff refilled plaintiff’s prescriptions pursuant to plaintiff’s kite (*Id.*, kite  
20 notation dated 8/6/96). One 2001 kite response indicates that plaintiff received lotion he sought  
21 (*Id.*, notation dated 3/20/01). In January 2002, staff advised plaintiff that a specialist consult was  
22 requested for plaintiff and also advised plaintiff to purchase baby oil and vitamin E in the canteen  
23 (*Id.*, kite notations dated 1/6/02; 1/17/02). In May 2002, plaintiff received prescription ointment  
24 (*Id.*, kite notations dated 5/14/02; 5/23/02). In July 2002, medical staff informed plaintiff that  
25 they were trying to locate oral vitamin A for a trial of high dose therapy (*Id.*, kite notation dated  
26 7/17/02, staff also noted “[d]ermatology recommended 40% urea, but you did not like the 12%  
27  
28

1 urea, are you willing to try the 40%?”). In August 2002, plaintiff submitted two kites seeking  
2 vitamin E bath oil and vitamin D pills, but the response to the second kite indicates that plaintiff  
3 then refused the vitamin E oil, and that, based on dermatology’s recommendation, plaintiff was  
4 to try to 40% urea lotion before oral medications (*Id.*, kite notations dated 8/8/02; 8/16/02).  
5 Plaintiff submitted an October 2003 kite to Dr. MacArthur complaining about the cream he used,  
6 to which Dr. MacArthur responded that the cream was recommended by a very good  
7 dermatologist and it was up to plaintiff whether to use it (*Id.*, kite notation dated 10/4/03). In  
8 August 2004, plaintiff was advised that the Utilization Review Committee denied him a  
9 dermatologist visit (*Id.*, kite notation dated 8/26/04).  
10

11         At the conclusion of the report, the NDOC health information director states that plaintiff  
12 has received adequate treatment for his incurable condition and points out that a dermatologist  
13 saw plaintiff and he has received many different prescription and non-prescription treatments.  
14 *Id.* The health information director also notes that, according to a Penn State College of Medicine  
15 resource, ichthyosis is a lifelong problem, but has no serious complications when treated properly,  
16 and that Harvard Medical Schools Consumer Information advises that moisture-retaining creams  
17 are the appropriate treatment. *Id.* The Penn State resource the director refers to also states that  
18 the condition may be “intensely itchy, and scratching may lead to broken skin and infection.” *Id.*,  
19 p. 34.  
20

21         Dr. Steven MacArthur attests in his affidavit that ichthyosis is a congenital skin disease,  
22 which is not painful and has no serious complications, and for which plaintiff has been prescribed  
23 over a dozen different treatments. *Id.*, Ex. B. Dr. MacArthur further states that Vaseline is an  
24 adequate remedy used successfully by some his private patients. *Id.*  
25  
26  
27  
28

1 Pursuant to this court's order (#40), plaintiff reviewed his medical records and filed a  
2 supplement to his opposition to summary judgment (#55). Plaintiff alleges that defendants  
3 refused to provide him with his complete medical files for 2004, 2005 and 2006, but fails to  
4 explain what is missing. *Id.* In his supplement, plaintiff for the first time states that he is only  
5 alleging that he has been denied treatment since 2004; he acknowledges that he received  
6 treatment for eleven years prior to 2004. *Id.* He asserts that the last prescription he received was  
7 in October 2003. *Id.*

9 Plaintiff also filed a motion he styled motion for default judgment pursuant to Fed. R. Civ.  
10 P. 37(b)(2) (#49), in which he again claims that certain medical records were removed prior to  
11 his review. It is unclear if plaintiff actually seeks Fed. R. Civ. P. 55 default judgment, or  
12 sanctions pursuant to Rule 37(b)(2). Defendants opposed and stated that because plaintiff failed  
13 to identify what documents he believes were removed, defendants could not address the allegation  
14 (#52). Defendants included the affidavit of the ESP health information coordinator, which states  
15 that plaintiff had a three-hour review of his medical records on December 19, 2005. *Id.* The  
16 affidavit states that thereafter, plaintiff submitted several requests for copies of documents from  
17 his medical records and was allowed to keep the copies in his cell. *Id.* Defendants attach several  
18 copy requests submitted by plaintiff. *Id.*

21 Defendants move for summary judgment (#30).

## 22 II. DISCUSSION & ANALYSIS

### 23 A. Discussion

#### 24 1. Motion for default judgment

25 When considering whether to enter a default judgment, the court should consider "(1) the  
26 possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the  
27  
28

1 sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a  
 2 dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7)  
 3 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the  
 4 merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471-2 (9th Cir. 1986); *see also Al-Torki v. Kaempin*,  
 5 78 F.3d 1381, 1384 (9th Cir. 1996).  
 6

## 7 **2. Motion for summary judgment**

8 Summary judgment allows courts to avoid unnecessary trials where no material factual  
 9 disputes exist. *Northwest Motorcycle Ass’n v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1471 (9th  
 10 Cir. 1994). In deciding whether to grant summary judgment, the court must view the evidence  
 11 and any inferences arising from the evidence in the light most favorable to the nonmoving party.  
 12 *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). The court grants summary judgment if  
 13 no genuine issues of material fact remain in dispute and the moving party is entitled to judgment  
 14 as a matter of law. FED. R. CIV. P. 56(C). Judgment as a matter of law is appropriate where there  
 15 is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party.  
 16 FED. R. CIV. P. 50(a). Where reasonable minds could differ on the material facts at issue,  
 17 however, summary judgment should not be granted. *Warren v. City of Carlsbad*, 58 F.3d 439,  
 18 441 (9th Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).  
 19  
 20

21 The moving party bears the burden of informing the court of the basis for its motion, and  
 22 submitting evidence which demonstrates the absence of any genuine issue of material fact.  
 23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden,  
 24 the party opposing the motion may not rest upon mere allegations or denials in the pleadings but  
 25 must set forth specific facts showing that there exists a genuine issue for trial. *Anderson v.*  
 26 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).  
 27  
 28

1 Only evidence which might be admissible at trial may be considered by the court in ruling  
2 on a motion for summary judgment. FED. R. CIV. P. 56(c); *Beyene v. Coleman Security Services,*  
3 *Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988). Evidence without a proper foundation cannot support  
4 a motion for summary judgment. *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.  
5 1987).  
6

7 Material facts are facts that might affect the outcome of the case; the court determines  
8 materiality by reference to the substantive law that controls the case. *Anderson*, 477 U.S. at 248.  
9 Disputes over irrelevant or unnecessary facts should not be considered. *Id.* If, given the evidence  
10 submitted, a reasonable jury could hold for the nonmoving party, the dispute over material fact  
11 is "genuine." *Id.* Where there is a complete failure of proof on an essential element of the case  
12 for the nonmoving party, all other facts become immaterial, and the moving party is entitled to  
13 judgment as a matter of law. *Celotex*, 477 U.S. at 323.  
14

### 15 **3. Motion for preliminary injunction**

16 To warrant preliminary injunctive relief in the Ninth Circuit, the petitioner must  
17 demonstrate either: (1) a likelihood of success on the merits and the possibility of irreparable  
18 injury, or (2) that serious questions going to the merits were raised and the balance of hardships  
19 tips sharply in his or her favor. *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d  
20 914, 917 (9th Cir. 2003). Preliminary injunctive relief is designed to "preserve the status quo and  
21 prevent irreparable harm until the court has an opportunity to rule on the lawsuit's merits."  
22 *Lebron v. Comm'n John Armstrong*, 289 F. Supp.2d 56, 61 (D. Conn. 2003) (citation and internal  
23 quotations omitted). To prevail on a motion for preliminary injunction, the court must first  
24 inquire whether plaintiff's constitutional claims will likely prevail on the merits. *Luckette v.*  
25 *Lewis*, 883 F. Supp. 471, 475 (D. Ariz. 1995).  
26  
27  
28

#### 4. Deliberate indifference and sufficiently serious harm

The Eighth Amendment prohibits the imposition of cruel and unusual punishments and “embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (citation and internal quotations omitted). In *Farmer v. Brennan*, the Supreme Court reiterated the standards for prevailing on an Eighth Amendment claim. 511 U.S. 825, 828 (1994). The court once again stated that “[a] prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.” *Id.*, citing *Helling v. McKinney*, 509 U.S. 25 (1993), *Wilson v. Seiter*, 501 U.S. 294 (1991), and *Estelle*, 429 U.S. 97. To establish an Eighth Amendment violation, a plaintiff’s case must satisfy an objective standard -- that the deprivation was serious enough to amount to cruel and unusual punishment, and a subjective standard -- deliberate indifference. *See Wilson*, 501 U.S. at 297-304; *see also Farmer*, 511 U.S. at 834.

The subjective standard of deliberate indifference for Eighth Amendment liability requires “more than ordinary lack of due care for the prisoner’s interests or safety.” *Farmer*, 511 U.S. at 835, quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986). The requisite state of mind lies “somewhere between the poles of negligence at one end and purpose or knowledge at the other.” *Id.* at 836. It is the equivalent of recklessly disregarding a substantial risk of serious harm to the inmate. *Id.*

“[D]eliberate indifference to a prisoner’s serious illness or injury” is a violation of the Eighth Amendment prohibition against cruel and unusual punishment. *Estelle*, 429 U.S. at 105. In order to prove deliberate indifference, plaintiff must show that prison staff denied, delayed, or intentionally interfered with medical treatment or that the way prison staff provided medical care indicates deliberate indifference, and that plaintiff sustained damages as a result of such conduct.



1 *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988). Indifference may be manifested  
 2 by prison staff intentionally denying or delaying access to medical care or intentionally interfering  
 3 with treatment once prescribed. *Estelle*, 429 U.S. at 104-05.

4 Mere negligence on the part of prison medical staff is not sufficient to prove deliberate  
 5 indifference. *Id.* “A defendant must purposefully ignore or fail to respond to a prisoner’s pain  
 6 or possible medical need in order for deliberate indifference to be established.” *McGuckin v.*  
 7 *Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992), *overruled in part on other grounds in* *WMX*  
 8 *Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997). Prison medical staff does not violate  
 9 the Eighth Amendment simply because their opinions concerning medical treatment conflict with  
 10 the opinion of the inmate-patient. *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).  
 11 Failure to allow every requested visit to a doctor does not constitute medical indifference where  
 12 the evidence shows that an inmate received medical treatment. *See Estelle*, 429 U.S. at 106-07.

### 15 **5. Due process**

16 The procedural guarantees of the Fourteenth Amendment’s Due Process Clause apply only  
 17 when a constitutionally-protected liberty interest is at stake. *See Tellis v. Godinez*, 5 F.3d 1314,  
 18 1316 (9th Cir. 1995). Liberty interests can arise both from the Constitution and from state law.  
 19 *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). When deciding whether the Constitution itself  
 20 protects an alleged liberty interest of a prisoner, the court should consider whether the practice  
 21 or sanction in question “is within the normal limits or range of custody which the conviction has  
 22 authorized the State to impose.” *Meachum v. Fano*, 427 U.S. 215, 225 (1976). Regarding  
 23 medical treatment, a prison inmate has no independent constitutional right to outside medical care  
 24 additional and supplemental to the medical care provided by the prison staff within the institution.  
 25 *See Estelle*, 429 U.S. at 103-04.

1           **6. Requirement of personal participation and respondeat superior**

2           “Liability under section 1983 arises only upon a showing of personal participation by the  
3 defendant. A supervisor is only liable for constitutional violations of [her] subordinates if the  
4 supervisor participated in or directed the violations, or knew of the violations and failed to act to  
5 prevent them. There is no respondeat superior liability under section 1983.” *Taylor v. List*, 880  
6 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted); *see also Mabe v. San Bernardino County*, 237  
7 F.3d 1101, 1109 (9th Cir. 2001).

8  
9           Because there is no respondeat superior liability under § 1983, liability of a supervisor  
10 requires an affirmative act, or failure to act where there is an affirmative duty. *Harris v.*  
11 *Roderick*, 126 F.3d 1189, 1204 (9th Cir. 1997). For example, in *Harris* the court held that FBI  
12 supervisors were liable for the shooting of a defendant where the supervisors were alleged to have  
13 developed a plan that resulted in the shooting. *Id.* However, the court was careful to note that  
14 this was not liability under a theory of respondeat superior. *Id.* Rather, the supervisors were  
15 directly liable because of their affirmative acts. *Id.* “A supervisor may be liable if there exists  
16 either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient  
17 causal connection between the supervisor’s wrongful conduct and the constitutional violation.”  
18 *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation  
19 omitted). “The requisite causal connection can be established . . . by setting in motion a series  
20 of acts by others which the actor knows or reasonably should know would cause others to inflict  
21 the constitutional injury.” *Id.* at 1447, *quoting Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir.  
22 1978). The court noted that this is not a form of vicarious liability, but is direct liability. *Id.*

23  
24           **B. Analysis**

25  
26           Regarding personal participation, defendants argue that plaintiff has alleged no facts that  
27  
28

1 indicate Kenny Guinn, Jackie Crawford, E.K. McDaniel and Ted D'Amico personally  
2 participated in violating plaintiff's Eighth and/or Fourteenth Amendment rights (#30). Plaintiff  
3 responds that Jackie Crawford, E.K. McDaniel and Ted D'Amico had knowledge of plaintiff's  
4 complaints that he received inadequate treatment and, later, no treatment for his skin condition  
5 because plaintiff filed kites and grievances with ESP and filed a complaint with NDOC (#17, 55).  
6

7       Since there is no respondeat superior liability under § 1983, a supervisor is only liable for  
8 constitutional violations of his subordinates if the supervisor participated in or directed the  
9 violations, or knew of the violations and failed to act to prevent them. *Taylor*, 880 F.2d at 1045.  
10 "Liability under § 1983 must be based on the personal involvement of the defendant." *Barren*  
11 *v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Construing this *pro se* inmate plaintiff's  
12 pleadings liberally, *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (*per curiam*), the court finds that  
13 plaintiff sufficiently alleges that Jackie Crawford, E.K. McDaniel, and Ted D'Amico knew of the  
14 alleged Eighth Amendment violations and failed to act to prevent them (#17; 31, Ex. 2A, 2C).  
15 However, plaintiff provides no specific allegations that Kenny Guinn participated in or had  
16 knowledge of alleged ESP and NDOC staff misconduct; therefore, plaintiff has failed to allege  
17 an essential element of his case as to Kenny Guinn (*See* #17, 55) *Celotex*, 477 U.S. at 323. Thus,  
18 defendants' motion for summary judgment (#30) is granted as to Kenny Guinn.  
19  
20

21       Turning to the Eighth Amendment claims, defendants contend that plaintiff has presented  
22 no evidence demonstrating that he was denied medical treatment. *Id.* Defendants point to the  
23 summary of plaintiff's medical kites, which reflect that plaintiff has a congenital, incurable  
24 condition and that plaintiff has received at least seventeen different products or medications to  
25 treat his skin condition. *Id.*, Ex. A. Defendants acknowledge that plaintiff's recent requests to  
26 see a dermatologist were denied. *Id.* However, defendants emphasize that plaintiff had seen a  
27  
28

1 dermatologist less than a year earlier and argue that prison doctors must be afforded the discretion  
2 to determine whether an inmate needs to see a specialist (#30).

3 Plaintiff attaches the affidavits of two cellmates. One cellmate attests that plaintiff suffers  
4 from skin that flakes and peels, leaving open cuts, scabs, red irritated areas and causes extreme  
5 itching (#37, Ex. A). The cellmate reports that plaintiff suffers most in the winter. *Id.* Another  
6 cellmate states that plaintiff did not suffer as much when he received treatment (#59). That  
7 cellmate attests that he purchased lotions, creams, etc., for plaintiff from the canteen, but these  
8 products did not alleviate plaintiff's symptoms. *Id.*

9  
10 In plaintiff's supplement to his opposition he includes a December 10, 2005 kite in which  
11 Dr. MacArthur refused plaintiff's request for a medical appointment or treatment (#55, Ex. A).  
12 In that kite plaintiff complains that "store-bought cosmetics" do not work. *Id.* Plaintiff also states  
13 that he was seen by a doctor on or about December 14, 2005 (#55). Plaintiff attaches a notation  
14 from his medical file, apparently written by the doctor he saw on December 14, advising prison  
15 officials to consider transferring plaintiff to a prison in a warmer climate to try to alleviate  
16 plaintiff's symptoms. *Id.*, Ex. B, C. Plaintiff claims that after many years of providing treatment,  
17 prison medical staff stopped providing treatment in 2004, despite his many kites describing his  
18 suffering (#55). Exhibit C is a list of physicians' orders that reflects notations regarding treatment  
19 and prescriptions in April, June, October, November and December 2005. *Id.*, Ex. C. Plaintiff  
20 provides no explanation for the record and it is not possible for the court to determine whether  
21 most of the notations relate to plaintiff's ichthyosis, except for the December suggestion of a  
22 transfer to a southern Nevada prison for the warmer climate. *Id.*

23  
24  
25  
26 Unfortunately, plaintiff appears to suffer from an uncomfortable, painful, itchy condition;  
27 however, plaintiff has not demonstrated that defendants acted with deliberate indifference in  
28

1 denying him medical treatment. *Estelle*, 429 U.S. at 105. In fact, defendants presented evidence  
2 that plaintiff has received extensive treatment over many years. The record reflects that plaintiff's  
3 recent requests to see a dermatologist have been denied, and it appears medical staff have advised  
4 plaintiff to purchase skin products from the canteen (#30, Ex. A; #55, Ex. A). However, Dr.  
5 MacArthur's affidavit states that over-the-counter products such as Vaseline are often used to  
6 treat ichthyosis (#30, Ex. B). The court finds that the responses to plaintiff's medical kites over  
7 the years appear to show that medical staff attempted to find treatments or combinations of  
8 treatments, including topical and oral prescription medications and over-the-counter products to  
9 alleviate the symptoms of plaintiff's incurable condition (#30, Ex. A). Plaintiff's contention that  
10 medical staff have essentially ignored him since 2004 is belied by the doctor's December 2005  
11 notation suggesting plaintiff be transferred to a warmer climate (#55, Ex. B).

14 Construing the allegations in the light most favorable to plaintiff, even if medical staff has  
15 denied plaintiff dermatologist visits since 2004 and directed him to use over-the-counter products,  
16 these actions do not evince deliberate indifference on the part of medical staff. Defendants have  
17 not violated the Eighth Amendment simply because plaintiff disagrees with the doctors' opinions  
18 concerning his medical treatment. *Franklin*, 662 F.2d at 1344. Plaintiff also cannot meet the  
19 objective requirement that the alleged deprivation of medical care is serious enough to rise to  
20 cruel and unusual punishment because he has not demonstrated that he was deprived of necessary  
21 medical care. *Farmer*, 511 U.S. at 298.

23 Regarding the alleged Fourteenth Amendment violation, plaintiff does not allege that any  
24 mechanism that might implicate due process exists to appeal prison officials' decision to deny  
25 him a dermatologist visit (*See* # 17, 55). Because a prison inmate has no independent  
26 constitutional right to see an outside medical specialist, *see Estelle*, 429 U.S. at 103-04, plaintiff  
27  
28

1 cannot prevail on his Fourteenth Amendment claims. The court notes that the fact that plaintiff  
2 was allowed to see a dermatologist less than a year before he made the request at issue further  
3 undermines his due process allegations. Accordingly, defendants' motion for summary judgment  
4 (#30) is granted as to the remaining defendants.

5  
6 In light of the court's grant of summary judgment motion, plaintiff's motion for  
7 preliminary injunction (#31/32) is denied as moot. Plaintiff has not demonstrated a likelihood  
8 of success on the merits, the possibility of irreparable injury, or that he is likely to prevail on his  
9 Eighth Amendment claim, as required in order to obtain a preliminary injunction. *Southwest*  
10 *Voter Registration Educ. Project*, 344 F.3d at 917. Nor has plaintiff shown that serious questions  
11 going to the merits were raised and the balance of hardships tips sharply in his favor. *Southwest*  
12 *Voter Registration Educ. Project*, 344 F.3d at 917. Similarly, plaintiff's motion for default  
13 judgment (#49) is denied as moot.  
14

### 15 III. CONCLUSION

16 Based on the foregoing and for good cause appearing, the court concludes that plaintiff  
17 has not demonstrated that defendants violated his Eighth Amendment rights with respect to  
18 plaintiff's medical treatment. As such, the court recommends that defendants' motion for  
19 summary judgment (#30) be granted. The court further recommends that plaintiff's motion for  
20 a preliminary injunction (#31/32) be denied and that plaintiff's motion for default judgment (#49)  
21 be denied.  
22

23 The parties are advised:

24  
25 1. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice,  
26 the parties may file specific written objections to this report and recommendation within ten days  
27 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
28

1 Recommendation” and should be accompanied by points and authorities for consideration by the  
2 District Court.

3 2. This report and recommendation is not an appealable order and any notice of appeal  
4 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court’s judgment.  
5

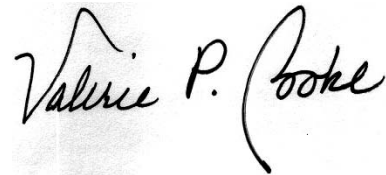
6 **IV. RECOMMENDATION**

7 **IT IS THEREFORE RECOMMENDED** that defendants’ motion for summary  
8 judgment (#30) be **GRANTED**.

9 **IT IS FURTHER RECOMMENDED** that plaintiff’s motion for preliminary injunction  
10 (#31/32) be **DENIED**.

11 **IT IS FURTHER RECOMMENDED** that plaintiff’s motion for default judgment (#49)  
12 be **DENIED**.  
13

14 **DATED:** April 24, 2006.  
15

16   
17

18 **UNITED STATES MAGISTRATE JUDGE**  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28